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September 8, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder,

I write to request information about the hiring practices of the Justice Department's Civil Rights Division.

In recent months some reports have suggested that under your and Division Assistant Attorney General Perez's leadership lawyers considered to have "liberal" views are dramatically more likely to be selected for hiring than those considered to have "conservative" views. According to a recent analysis, not one attorney with a resume considered to be "conservative" was hired for any of the approximately 130 Civil Rights Division positions filled during this Administration.¹ Even Bush era hiring, which earned scathing rebuke in an official 2009 report into charges of ideologically skewed hiring preferences, yielded 7% liberals.² Such lopsided statistics on its own hiring should be of great concern to the Division given its relentless attacks on employment practices having "disparate impact."³

One of the pieces of evidence adduced in a 2009 Office of Professional Responsibility (OPR) report, was that a Bush-era hiring manager sought an invitation to a Federalist Society event in order to recruit conservative lawyers.⁴ It was thus surprising, when only months later,

¹ Richard Pollack, *PJ Media's DOJ FOIA Request Comes Back ... Redacted*, PAJAMAS MEDIA, Jun. 1, 2011, <http://pajamasmedia.com/blog/pajamas-doj-foia-request-comes-back-redacted/?singlepage=true>; Charlie Savage, *In Shift, Justice Department is Hiring Lawyers With Civil Rights Backgrounds*, N.Y. TIMES, Jun. 1, 2011, at A1, available at <http://www.nytimes.com/2011/06/01/us/politics/01rights.html?pagewanted=all>.

² Charlie Savage, *In Shift, Justice Department is Hiring Lawyers With Civil Rights Backgrounds*, N.Y. TIMES, Jun. 1, 2011, at A1, available at <http://www.nytimes.com/2011/06/01/us/politics/01rights.html?pagewanted=all>.

³ Byron York, *Obama's Zealous Civil Rights Enforcer Gets Busy*, WASHINGTON EXAMINER, Aug. 6, 2011, <http://washingtonexaminer.com/politics/obama039s-zealous-civil-rights-enforcer-gets-busy>.

⁴ U.S. DEPT. OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, OFFICE OF PROFESSIONAL RESPONSIBILITY, AN INVESTIGATION OF ALLEGATIONS OF POLITICIZED HIRING AND OTHER IMPROPER PERSONNEL ACTIONS IN THE CIVIL RIGHTS DIVISION 31 (2009).

Assistant Attorney General for Civil Rights Thomas E. Perez, told the American Constitutional Society (ACS), "I am going to be calling each and every one of you to recruit you"⁵ ACS is simply the liberal equivalent of the Federalist Society, according to founder the Honorable Abner Mikvah.⁶

The Division seems to have made good on Mr. Perez's promise. According to reports, the Division's Voting Section has hired sixteen attorneys, all with direct ties to highly liberal groups including ACS and the ACLU, organizations the OPR specifically deemed liberal indicators in its investigation.⁷

Ideological skew in the Voting Section is of particular concern because of the Section's potential to influence election outcomes. For example, under the Voting Rights Act, the Section is able to force states to draw districts so that minority favored candidates win. This power invites overreaching. In fact, in the Clinton years, courts admonished the Division for the "impropriety" of collaborating with the ACLU to demand Georgia draw unnecessary majority-minority districts.⁸

The same pattern has emerged in one media outlet's ongoing study of new hires in the Division's other ten components. In the seven sections analyzed so far, all 79 hires had "far-left" credentials. These were likely either obvious on their resumes or reasonably discoverable through a quick internet search. Noticeably absent were new employees with resumes bearing obvious conservative or neutral ideological credentials.⁹

⁵ York, *supra* note 3.

⁶ The Honorable Abner Mikva, *ACS v. Federalists*, THE NATION, April 17, 2006, http://www.acslaw.org/files/ACS_Nation_art_B.pdf.

⁷ Hans A. von Spakovsky, *Every Single One: The Politicized Hiring of Eric Holder's Voting Section*, PAJAMAS MEDIA, Aug. 8, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holder%E2%80%99s-voting-section/>; U.S. DEP'T OF JUSTICE, *supra* note 4 at A1-A2; U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, OFFICE OF PROFESSIONAL RESPONSIBILITY, AN INVESTIGATION OF ALLEGATIONS OF POLITICIZED HIRING IN THE DEPARTMENT OF JUSTICE HONORS PROGRAM AND SUMMER LAW INTERN PROGRAM 20 (2008).

⁸ *Johnson v. Miller*, 864 F.Supp. 1354, 1368 (S.D. Ga. 1994).

⁹ Richard Pollock, *Every Single One: The Politicized Hiring of Eric Holder's Disability Rights Section*, PAJAMAS MEDIA, Sept. 2, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holders-disability-rights-section/>; J. Christian Adams, *Every Single One: The Politicized Hiring of Eric Holder's Housing Section*, PAJAMAS MEDIA, Aug. 30, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holder%E2%80%99s-housing-section/>; J. Christian Adams, *Every Single One: The Politicized Hiring of Eric Holder's Compliance Section*, PAJAMAS MEDIA, Aug. 26, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holder%E2%80%99s-compliance-section/>; Hans A. von Spakovsky, *Every Single One: The Politicized Hiring of Eric Holder's Employment Section*, PAJAMAS MEDIA, Aug. 22, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holder%E2%80%99s-employment-section/>; J. Christian Adams, *Every Single One: The Politicized Hiring of Eric Holder's Education Section*, PAJAMAS MEDIA, Aug. 17, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holder%E2%80%99s-education-section/>; Hans A. von Spakovsky, *Every Single One: The Politicized Hiring of Eric Holder's Special Litigation Section*, PAJAMAS MEDIA, Aug. 16, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holders-special-litigation-section/>; Richard Pollock, *Every Single One: The*

By contrast, the 2009 OPR report on Division hiring found politicization there limited to components subject to the control of a single specific hiring manager.¹⁰ Outside of that, the republican-to-democrat hiring split was closer to 50-50. Even within the problem areas, 2% of hires had obvious liberal credentials on their resumes.¹¹ In addition, ideologically neutral resumes accounted for over a third of Bush-era hires in the period studied.

Attempts have been made to dismiss the current ideological imbalance as the natural result of updated hiring practices that prioritize voting rights experience. A former Voting Section official told the *New York Times*, “[y]ou’re not hiring people because they are liberal . . . You’re hiring them because they have terrific experience in civil rights . . .”¹² However, this answers the total exclusion of republican or non-partisan lawyers only if you believe liberal activist groups are the only place to gain relevant experience. Why should experience with the ACLU challenging Georgia’s voter ID law be any more “terrific” than skills gained defending it, particularly since the law ultimately survived both state and federal challenges?¹³

The fact is there are ample opportunities to gain excellent civil rights experience outside of the traditional liberal bastions including defending employers or jurisdictions these activists target for suit. There are also numerous conservative organizations involved in civil rights litigation such as the American Center for Law and Justice, the Thomas More Law Center and others.¹⁴

Rather, as in a “disparate impact” case, the glaring ideological disproportion points to discrimination masked by a seemingly neutral experience requirement. As another former Division official observed, “allowing professional civil rights lawyers to make hiring decisions based on civil rights experience was tactically ‘brilliant’ because it would result in disproportionately liberal outcomes without any need for interference by Obama political appointees.” As the Division is no doubt aware, the 2009 OPR report found discriminating in hiring on the basis of political affiliation is prohibited by both federal law and Department policy.¹⁵

Politicized Hiring of Eric Holder's Immigration Office, PAJAMAS MEDIA, Aug. 12, 2011, <http://pajamasmedia.com/blog/every-single-one-the-politicized-hiring-of-eric-holder%E2%80%99s-immigration-office/>.

¹⁰ U.S. DEP'T OF JUSTICE, *supra* note 4 at 14.

¹¹ U.S. DEP'T OF JUSTICE, *supra* note 4 at 33.

¹² Savage, *supra* note 2.

¹³ ; *Democratic Party Of Georgia, Inc. v. Perdue*, 707 S.E.2d 67 (2011); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1354 (11th Cir. 2009).

¹⁴ See, e.g., U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, OFFICE OF PROFESSIONAL RESPONSIBILITY, AN INVESTIGATION OF ALLEGATIONS OF POLITICIZED HIRING IN THE DEPARTMENT OF JUSTICE HONORS PROGRAM AND SUMMER LAW INTERN PROGRAM 104-110 (2008).

¹⁵ U.S. DEP'T OF JUSTICE, *supra* note 4 at 4-6.

Substantial committee and government resources were employed in investigating charges of ideologically skewed hiring during the Bush Administration. While some of that was obviously prompted by a desire to damage republicans, I think most Americans would like to believe critics were acting largely out of sincere concern that the Division neutrally enforce the law to guard equally the civil rights of all. To so soon replicate, and even surpass, your predecessors in ideologically skewed hiring, after raising such a sustained cry against it, would be a level of hypocrisy foreign even to Washington.

Perhaps things are not as they appear, but the preliminary evidence is damning. Having established probable cause, the Committee's oversight responsibilities demand it investigate further. Accordingly, please provide the following information by September 30, 2011.

1. Please provide the resumes and other application materials of all applicants to the Civil Rights Division received through any channel (e.g., mail, email, internal referral) since January 20, 2009.
2. Please produce all emails, voice messages, meeting minutes, marked-up resumes and any other documents pertaining to consideration of any applicants for Division positions since January 20, 2009.
3. Please list all employees, political and career, involved in each stage of the Division's hiring process and the role each plays at each stage.
4. Please provide identical information regarding applicants to the Justice Department's Honors Program and the process for their consideration.
5. Did any employees involved in recruiting perform internet searches on applicants, or any other research, to delve more deeply into their background (e.g., reading their law review articles, studying the organizations with which they are affiliated etc.)?
6. The Committee has received information that the Division is struggling to close a budget gap. If true, what sort of discussions and initiatives are underway? Please detail how this shortfall arose given the substantial budget increases Congress granted the Division in recent cycles.
7. Please provide the details of any guidance, written or oral, formal or informal given to Division employees involved in the hiring process pertaining to selection criteria for applicants.
8. Is there any policy or guidance, official or unofficial, suggesting experience representing defendants in civil rights cases should not be considered experience on par with having represented plaintiffs? Why or why not?
9. Do you agree that, in a conceptual sense at least, the Division's hiring practices had a "disparate impact"? If so, how does the Department explain it?

The Honorable Eric H. Holder, Jr.

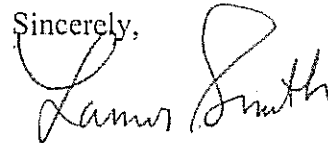
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It is troubling that what the Division touted as its “restor[ation of] the career-driven, transparent hiring process” appears to have produced even more ideologically skewed results than what it replaced.¹⁶ Your answers to the questions above will help the Committee identify the contours of the problem and seek solutions.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lamar Smith". The signature is fluid and cursive, with the first name "Lamar" and last name "Smith" clearly distinguishable.

Lamar Smith
Chairman

cc: The Hon. John Conyers, Jr.

¹⁶ Savage, *supra* note 2.